

Decision 19-08-014

August 1, 2019

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Protect Our
Communities Foundation for Rehearing of
Resolution E-4981.

Application 19-03-026
(Filed March 27, 2019)

**ORDER DENYING THE APPLICATION FOR
REHEARING OF RESOLUTION E-4981**

I. INTRODUCTION

In this Order, we dispose of the application for rehearing of Resolution E-4981 (or “Resolution”) filed by Protect Our Communities Foundation (“POC”).

In D.04-06-011, the Commission approved a 10-year Power Purchase Tolling Agreement (“PPTA”) between San Diego Gas & Electric Company (“SDG&E”) and Otay Mesa Energy Center, LLC (“OMEC”), a subsidiary of Calpine Corporation (together, “Calpine”). Under the PPTA, SDG&E purchases energy and capacity from OMEC, a 608 megawatt (“MW”) gas-fired combined-cycle power plant in SDG&E’s service territory.¹

The PPTA was subsequently modified by D.06-02-031 and D.06-09-021, which resulted in the existing PPTA that ends October 2, 2019.² Among other things, D.06-09-021 approved a Ground Sublease and Easement Agreement that added provisions by which SDG&E could own OMEC when the current contract term expires.³

¹ See, e.g., *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development* [D.04-06-011] (2004).

² See, e.g., *Order Instituting Rulemaking to Establish Policies and Cost Recovery Mechanisms for Generation Procurement and Renewable Resource Development* [D.06-09-021] (2006).

³ Under what was termed the “Call Option,” exercisable at SDG&E’s discretion, Calpine would sell OMEC to SDG&E for \$377 million. (D.06-09-021, *supra*, at pp. 1-2, 5-6, 16-17 [Findings of Fact Numbers 11 & 12]. (slip op.)) SDG&E did not exercise the Call Option, which is now expired. Under the alternative “Put Option,” exercisable at Calpine’s discretion, SDG&E would

As an alternative to potential ownership of OMEC, SDG&E submitted Advice Letter (“AL”) 3294-E requesting Commission approval of a new 4-year, 11-month contract with OMEC. (“Confirmation”). Under the Confirmation, SDG&E would purchase local, system, and flexible capacity.⁴ The term of the new contract would begin October 3, 2019, when the existing PPTA expires, and end August 31, 2024.⁵ Resolution E-4981 approved the proposed Confirmation.

A timely application for rehearing was filed by POC, alleging: (1) the Commission violated General Order (“GO”) 96-B by approving the Confirmation via an advice letter process rather than a formal application; (2) approval of the Confirmation will impose unjust and unreasonable costs on ratepayers; and (3) the Commission failed to protect the economic viability of Community Choice Aggregators (“CCAs”); (4) the Commission failed to account changes in the legal and regulatory landscape that obviate the need for the Confirmation; and (5) the evidence failed to establish need. POC also requests that the Commission admit multiple documents into the advice letter administrative record. Responses were filed by SDG&E and Calpine.⁶

We have reviewed each and every argument raised in the application for rehearing and are of the opinion that good cause has not been established to grant rehearing. Accordingly, we deny the application for rehearing of Resolution E-4981 because no legal error was shown.

purchase OMEC for approximately \$280 million. (*Id.*, see also SDG&E Advice Letter 3294-E, dated October 26, 2018, at p. 1.)

⁴ See, e.g., Reply of SDG&E to Protest of AL 3294-E, dated November 26, 2018, at p. 5.

⁵ AL 3294-E, dated October 26, 2018, at p. 1.

⁶ Calpine states that because of POC’s challenge to Resolution E-4981, it timely exercised the Put Option and is proceeding with the pre-ownership due diligence process. Calpine also represents that if the Confirmation approved by Resolution E-4981 becomes final and unappealable before October 2, 2019, when the current PPTA expires, the sale of OMEC to SDG&E may not need to occur. (Otay Mesa Energy Center, LLC and Calpine Corporation’s Response to Application of the Protect Our Communities Foundation for Rehearing of Resolution E-4981, dated April 10, 2019, at pp. 3-4.)

II. DISCUSSION

A. The Administrative Record

POC submitted testimony and pleadings from other Commission proceedings, miscellaneous reports, and various newspaper articles along with its application for rehearing.⁷ POC states that it referenced these materials in its protest of AL 3294-E, but it did not actually provide them at that time. Stating it is unsure about what constitutes the administrative record, POC asks that we accept and consider this information now. (Rhg. App., at pp. 32-34.) We deny this request.

It is generally not sufficient to simply reference various materials in order for them to be considered a part of the administrative record. Parties should submit any testimony, pleadings, or other evidence for consideration along with any protest or comment. In any event, evidence should be provided well before the rehearing phase of a proceeding. We have rejected similar requests in the past, stating:

Such material cannot be considered because the rehearing phase of a proceeding is designed to identify and resolve legal error, not receive and evaluate new evidence....the rehearing application also fails to provide any analysis to support its claims....

(Application for Rehearing of Resolution E-4792 Filed by Southern California Edison Company, San Diego Gas & Electric Company, and the Natural Resources Defense Council for Rehearing of Resolution E-4792 [D.17-05-034] (2017) at pp. 10-11 (slip op.).)

Parties should also explain and analyze how any evidence to be considered applies to the facts and case in question to support their desired outcome. POC did not do that in its protest, and even now it offers no explanation or analysis to show how the materials were controlling for purposes of evaluating AL 3294-E.

⁷ See, e.g., Rhg. App., at p. 18, fns. 65 & 66, p. 20, fn. 81, p. 23, fn. 91, p. 24, fns. 95 & 96, p. 25, fn. 103, p. 30, fn. 125, & p. 32, fn. 129.

POC contends, however, that Public Utilities Code Section 1736 makes it incumbent on the Commission to accept the new information, and consider it now.⁸ In pertinent part, Section 1736 states:

If, *after such rehearing* and consideration of all the facts, including those arising since the making of the order or decision, the commission is of the opinion that the original order or decision of any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate, change, or modify it....

(Pub. Util. Code, § 1736.)

Section 1736 cannot be used to leave the record open indefinitely. The record is generally closed after the initial submission of evidence prior to any Commission order or decision. It is not open for the taking of new evidence absent a motion to set aside the closing and reopen the record, which must justify why the new or additional evidence was not provided at the outset.²

Section 1736 applies when as result of any decision considering a rehearing application, the Commission determines to grant limited rehearing. Section 1736 then allows for the taking of new evidence as appropriate. That is not the situation here. Thus, Section 1736 does not require that we accept and consider POC's late submission of evidence.

B. Process Used to Review and Approve the Confirmation

POC contends the Resolution is unlawful because: (1) it violated GO 96-B, Rule 5.2; (2) POC's protest, i.e., the existence of controversy required a formal application process; and (3) the Commission failed to provide adequate due process. (Rhg. App., at pp. 11-17.) These issues are addressed below.

⁸ All subsequent section references are to the Public Utilities Code unless otherwise stated.

² Commission Rules of Practice and Procedure, Rule 13.14, subd. (b). (See also Cal. Code of Regs., tit. 20, § 13.14, subd. (b).).

1. GO 96-B, Rule 5.2

POC contends that advice letter review was improper because GO 96-B, Rule 5.2 required SDG&E to file a formal application. (Rhg. App., at pp. 12-14.) We disagree.

Rule 5.2 identifies the matters appropriate to formal proceedings as follows:

1. The utility requests modification of a decision issued in a formal proceeding or otherwise seeks relief that the Commission can grant only after holding an evidentiary hearing, or by decision rendered in a formal proceeding;
2. The utility seeks Commission approval of a proposed action that the utility has *not* been authorized, by statute, by this General Order, or by other Commission order, to seek by advice letter; or
3. The utility seeks to challenge a Commission resolution addressing an advice letter submitted by the utility.

(GO 96-B, General Rule 5.2(A)(2) (emphasis added).)

By contrast, Rule 5.1 identifies matters appropriate to advice letters. The Rule states generally that advice letters are meant for quick and simplified review of requests that are not expected to be controversial, raise important policy questions, or require evidentiary hearings. Advice letter review is appropriate where, among other things, the utility:

1. *Has been authorized* or required, by statute, by this General Order, or by other Commission order, to seek the requested relief by means of an advice letter; or
2. Requests modification of a Commission resolution addressing a prior advice letter of the utility....

(GO 96-B, General Rule 5.1 (emphasis added).)

POC maintains that Rule 5.2 applied require a formal application because AL 3294-E raised controversial and important policy questions, such as Confirmation benefits and the reasonableness of contract costs. (Rhg. App., at pp. 12-13.)

POC is right that generally, GO 96-B directs controversial matters or those raising important policy matters to the formal application process. But as discussed in

part B.2. below, the mere existence of a protest or controversy does not necessarily preclude use of the advice letter process.

That is particularly true here, because SDG&E was not legally required to file *either* an advice letter or formal application for the Confirmation. As a 4-year, 11-month contract, we consider the Confirmation to be a medium term bilateral contract for purposes of Commission procurement practices. We allow utilities to enter such contracts without any prior Commission approval.¹⁰ In D.14-02-020, we stated:

Long-term contracts are five years or more in length. Long-term contracts must be submitted with an application to the Commission for pre-approval. *We currently do not impose oversight via advice letters over medium term contracts [under 5 years] except those with OTC units.* Per D.12-04-046, PPAs with OTC plants with contract duration of greater than two years must be submitted to the Commission via a Tier III advice letter.

*(Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans [D.14-02-020] (2014) at pp. 39-40 (slip op.) (emphasis added).)*¹¹

Based on the above authorization, at most SDG&E needed to file an advice letter pursuant to Rule 5.1.1. Thus, POC fails to establish Rule 5.2 mandated a formal application.

2. Contested Matters

POC concedes that D.14-02-020 allows contracting flexibility for medium term contracts, but argues that despite that, Commission decisions do not allow for advice letter review when matters are contested. POC argues that its protest rendered this a

¹⁰ See also Resolution E-4981, at pp. 8-9 [Explaining that the Commission's procurement practices, the Commission would normally review the reasonableness of a medium term contract at a later date.].

¹¹ POC argues that SDG&E never explained why it chose a contract term of 4-years and 11-months. POC suggests SDG&E chose that term solely to avoid the formal application process. (Rhg. App., at p. 17.) POC's offers no facts or evidence to suggest wrongdoing, and there is nothing unusual about a contract just because its term is less than 5 years. Thus, we will not infer any malintent.

contested matter, thus a formal application process was required. (Rhg. App. At pp. 13-14.)

To support its assertion, POC cites D.04-07-028, stating:

Today we relax the restrictions on negotiated bilateral contracts so that the utilities may take appropriate actions to reduce overall costs and increase local area reliability. In addition to the limited circumstances enumerated in D.03-12-062 at Conclusion of Law 15, we authorize the utilities to engage in bilateral negotiated contracts for capacity and energy from power plants where the purpose is to enhance local area reliability. Utilities may include such transactions in their quarterly compliance filings, for approval *if there is no objection*.

(Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans [D.04-07-028] (2004) at pp. 17-18 (slip op.) (emphasis added).)

POC's reliance on D.04-07-028 is misplaced. That decision predates D.14-02-020 by almost 10 years, and cannot reasonably be read to override or supersede the unqualified authorization given in our later decision.

Further, the language POC cites applies to after the fact cost recovery for transactions that have already taken place. That is not the issue here. And even then, D.04-07-028 is silent regarding what procedural process would be required if there is an objection to the inclusion of costs in a quarterly compliance filing. Thus, D.04-07-028 is not controlling here and did not mandate the use of a formal application.

Nevertheless, POC contends that to the extent the Commission may have relied on Rule 7.6 of GO 96-B to justify advice letter review, doing so was an arbitrary, capricious, and an abuse of discretion. (Rhg. App., at p. 13.)

Nothing in Resolution E-4981 suggests we relied on Rule 7.6 as the basis for allowing advice letter review. However, even if we had, it would not have been unlawful.

In Rule 7.6 we stated our intent to make advice letters subject to Industry Division disposition in all instances where the assignment of such task is lawful. In pertinent part the Rule states:

An advice letter will be subject to Industry Division disposition *even though its subject matter is technically complex*, so long as a technically qualified person could determine objectively whether the proposed action has been authorized by statutes of Commission orders cited in the advice letter. Whenever such determination requires more than ministerial action, the disposition of the advice letter on the merits will be by Commission resolution, as provided on Rule 7.6.2....

The Industry Division will review each advice letter filed with it, together with any timely *protests, responses, and replies*. If the Industry Division, in light of such review, concludes the advice letter is subject to disposition under this rule...the Industry Division will report its disposition....

(GO 96-B, Rule 7.6.1 (emphasis added).)

This language clearly shows that advice letter review may still be permissible even if a matter is complex or is the subject of protest.¹² And as discussed above, given SDG&E needed no Commission approval at all for the Confirmation, advice letter review was procedurally permissible and the most expedient course to take given the time sensitivity attendant to the terms for potential plant ownership.

Still, recognizing that POC's protest did warrant Commission consideration, the matter was not simply disposed of via Industry Division review. The matter was put before the full Commission for vote at a public business meeting using the formal resolution process, and thus, became a Commission decision.

We have similarly used the advice letter process in the past despite the existence of protest or controversy. For example, in Resolution O-0057, we stated:

For the purposes of clarification, independent of whether protests are filed by Tesoro or any party, all Advice Letters are carefully reviewed including consideration of whether the Advice Letter

¹² See also GO 96-B, Rule 7.4 governing protests, permissible grounds for protests, and responses.

raises issues that fall outside of the rules governing the Advice Letter process....As noted above Tesoro asserts that AL 49 was controversial “by virtue of the fact that it was contested by Tesoro and Valero.” However, the mere act of filing a protest, particularly where the protest makes broad unsubstantiated statements, does not mean that the advice letter is substantively controversial such that an application is required.

(Resolution O-0057, issued March 17, 2014, at pp. 18-19.)

For all these reasons, it was not an abuse of discretion to utilize the advice letter process in evaluating the Confirmation.

3. Due Process

POC states that SDG&E included post-October 2019 OMEC costs in its general rate case (“GRC”) application, and that process affords parties the opportunity for discovery, evidentiary hearings, briefing, comment, and public participation. POC argues that by not providing all the same opportunities here, it was deprived of adequate due process. (Rhg. App., at p. 16.) We reject this assertion.

Due process requires that parties be given adequate notice and opportunity to be heard.¹³ But it does not require the exact same process or procedure in every case. What process or procedures are required is flexible and may vary depending on the circumstances. For example, not every situation requires a formal hearing accompanied by the full rights of confrontation and cross-examination.¹⁴ The key is that parties have an opportunity to participate at a meaningful time and in a meaningful manner.¹⁵

GRC proceedings are highly complex and do generally warrant a full array of due process procedures and protections. But this matter was far less complex, and did not merit all the same procedures.

¹³ *Railroad Commission of California v. Pacific Gas and Electric Company* (1937); *People v. Western Air Lines, Inc.* (1954) 52 Cal.2d 621, 632.

¹⁴ See e.g., *Ryan v. California Interscholastic Federation-San Diego Section* (“Ryan”) (2001) 94 Cal.App.4th 1048, 1071-1072; *Mathews v. Eldridge* (1976) 424 U.S. 319, 334.

¹⁵ *Ryan*, *supra*, 94 Cal.App.4th at pp. 1071-1072.

Still, POC did receive a reasonable opportunity to be heard and participate in the advice letter process. It had notice of the advice letter and was afforded the opportunity to protest. It also had and availed itself of the opportunity to file comments on both draft resolutions that were issued for Commission consideration.¹⁶

These opportunities allowed POC to voice any objections and substantiate any arguments. That we were not persuaded by POC's arguments did not mean it was denied adequate due process.

C. Alleged Unjust and Unreasonable Costs

POC contends the Confirmation will result in unjust and unreasonable costs to ratepayers because capacity costs under the contract are far higher than the fair market value of capacity. (Rhg. App., at pp. 17-18.)

To support this position, POC argues that SDG&E's estimate of high end OMEC capacity costs are higher than procurement cost estimates it has provided in other Commission proceedings, and higher than the average value of capacity we have otherwise found in SDG&E and Southern California Edison Company's service territories. (Rhg. App., at p. 18.)¹⁷

The Resolution recognized that Confirmation costs do appear to be higher than current market prices, and that the benefits would likely be modest and dependent on energy prices remaining constant.¹⁸ But that does make Confirmation approval

¹⁶ The Protect Our Communities Foundation Protest to Advice Letter 3294-E, dated November 15, 2018; The Protect Our Communities Foundation Errata to the Protest to Advice Letter 3294-E, dated November 20, 2018; The Protect Our Communities Comments to Draft Resolution E-4981 Option A Regarding Advice Letter 3294-E, dated February 11, 2019; and The Protect Our Communities Comments to Draft Resolution E-4981 Option B Regarding Advice Letter 3294-E, dated February 11, 2019.

¹⁷ POC cites to a SDG&E PCIA Common Workpaper Model 2019 ERRRA Forecast and Energy Division 2017 Resource Adequacy Report as the basis of its conclusions regarding cost. It is not possible to evaluate the comparative value of the referenced information since POC did not timely submit this information or analyze and explain how cost assumptions and estimates used for those other purposes were controlling here.

¹⁸ Resolution E-4981, issued February 25, 2019, at pp. 11-12.

unreasonable or unlawful. Particularly if there is a basis to conclude that the resource is needed, which there was in this case.

POC asserts, however, that we should have considered alternatives for SDG&E to obtain less than the full 608 MW of capacity under the Confirmation. For example, POC argues that SDG&E's customers would be better off if OMEC was a merchant plant, receiving "as needed" Capacity Procurement Mechanism ("CPM") payments during the high demand June-September months. (Rhg. App., at p. 19.)

That might be POC's preference, but we were not required to consider hypothetical alternatives to the Confirmation. Based on AL 3294-E and the administrative record, there were only two possible options for consideration: the Confirmation Agreement; and possible SDG&E ownership of OMEC.

We also have no authority to require OMEC to operate as a merchant plant. And POC is wrong in its assumptions regarding CPM pricing. Local capacity payments are year-round, not monthly, as POC suggests.¹⁹

Based on the record before us, it stood to reason that costs associated with a shorter term Confirmation would be more beneficial in the long run than costs associated with OMEC ownership for the expected 20-year remaining life of the plant. Accordingly, POC fails to establish that approval of the Confirmation was unreasonable or unlawful.

D. CCA Viability

POC contends that by approving the Confirmation we violated the mandate of Section 366.2 to safeguard the economic viability of CCAs in the wake of the Power Charge Indifference Adjustment ("PCIA") for departing load customers. (Rhg. App., at pp. 20-22.)

Section 366.2 allows for the formation of CCAs, and entitles utility customers in a local communities to aggregate their electric load with CCAs.²⁰ But

¹⁹ Resolution E-4981, issued February 25, 2019, at p. 11.

²⁰ Pub. Util. Code, § 366.2, subd. (a)(1).

nothing in the statute requires the Commission to protect the economic viability of CCAs or ensure they remain viable concerns. And POC fails to identify any statutory provision that imposes such a requirement.

Nevertheless, POC states that the City of San Diego is poised to launch its own CCA, which it expects will start selling power in 2022. If that happens, it will overlap with the last two years of the Confirmation. POC argues that our recent PCIA decision allows for an “immediate spike and continuous escalation” of PCIA charges that will compromise the viability of both new and established CCAs if the Confirmation is allowed, thus we should not allow the Confirmation to stand. (Rhlg. App., at pp. 20-21, citing *Order Instituting Rulemaking to Review, Revise, and Consider Alternatives to the Power Charge Indifference Adjustment* [D.18-10-019] (2018).)

POC does not explain what CCAs will be harmed, or how they will be harmed, by the Confirmation. We were aware that even SDG&E acknowledged that if the City of San Diego forms a CCA it could obviate the need for the Confirmation. However, as the Resolution explained, the City has not yet submitted an implementation plan to the Commission or signed a binding notice of intent.²¹

We therefore agreed with SDG&E that because OMEC is needed currently to meet its local reliability needs, it is the prudent course to enter a new contract with OMEC for continued capacity. It is also likely true that any PCIA charges associated with the medium term Confirmation will be lower than charges that might occur during a long term ownership of OMEC.²² Thus, we were not convinced of the harms POC envisions.

We also interpret much of POC’s argument to be objections to the Commission’s PCIA decision. This is not the venue for such dispute. Any PCIA challenge is properly made in the PCIA proceeding, not here.

²¹ Resolution E-4981, at p. 11.

²² Advice Letter 3294-E, at pp. 5, 8.

Finally, POC argues it was error to accept the binary choice of either the Confirmation or SDG&E ownership of OMEC. POC argues we should have used an application process in order to consider other alternatives, such as a shorter one or two year contract with OMEC.

We are not required to consider alternatives to a proposed contract. And even if it was incumbent on us to do so, there was not any evidence here that a shorter term contract, such as the one or two year contract that POC advocates, was offered, possible, or even feasible. Thus, we find no error.

E. Changed Circumstances

POC contends that we failed to consider drastic changes in the legal and regulatory landscape of energy procurement that obviate the need for procurement from gas-fueled resources such as OMEC. These contentions are discussed below.

1. Load Growth

POC contends that the Confirmation is unnecessary because load growth in the San Diego region has been stagnant since 2006, and by 2025 many utility retail customers may be served by alternative sources of energy, such as CCAs, direct access providers, and rooftop solar. (Rhg. App., at pp. 22-24.)

Even if POC is right that there will be little to no load growth in SDG&E's territory, that does not mean the Confirmation is unreasonable. OMEC is an existing reliability resource that has been integral to meeting SDG&E's existing electric demand for the last 10 years. It stands to reason that its loss could have a negative effect even if load remains stagnant.

POC also fails to substantiate that CCAs, direct access providers and rooftop solar can or will obviate the need for OMEC. As noted above, there is no City of San Diego CCA at this point. And POC identifies no direct access providers with concrete plans to serve SDG&E's current customers. Reliance on rooftop solar is also not a viable replacement option for OMEC. Rooftop solar is an intermittent, non-

dispatchable resource that cannot be reasonably relied upon or called on to meet local electric need.

Further, POC fails to specify any statute, law, or decision violated by approval of the Confirmation. At most POC raises factual disputes. But that is not a basis for legal error.²³

2. SDG&E Procurement

POC contends the Confirmation is unnecessary because SDG&E has already over-procured energy resources that obviate any need for such gas-fired generation resources. For example, POC claims that hundreds of megawatts of new distributed solar and battery storage will be built through 2023, and if the City of San Diego forms its own CCA it will likely source from multiple renewable resources (Rhg. App., at pp. 24-25.)

It was not reasonable to rely on these assertions, however, because they are little more than broad and unsubstantiated claims for which there was no sound evidentiary support.

Still, POC argues that by the end of 2016 SDG&E had already contracted for 1,306 MW of solar resources (including 1 MW of rooftop solar), 1,233 MW of wind resources, and over 2,400 MW of gas-fired capacity under “some form of dedicated contracts.” (Rhg. App., at p. 24.)²⁴

Even if that is true, POC continues to ignore that solar and wind resources are intermittent resources. They are not a source of reliable, dispatchable energy as is gas-fired generation. And it was not established that such resources, even if existing and available, could effectively meet SDG&E’s local reliability need. In addition, without

²³ Pub. Util. Code, § 1732 [“the application for rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful.”].

²⁴ POC cites its 2018 POC rebuttal testimony in A.17-10-007, and its Petition for Modification of D.06-09-021 in R.01-10-024. As previously discussed, POC failed to timely submit the cited evidence for Commission consideration. Even if it had, absent a meaningful analysis and comparison with the facts and circumstances at issue here, such testimony and argument from other Commission proceedings does not automatically mean it could be relied on here.

specifics regarding the ability of other existing gas-fired contracts to supplant OMEC capacity, it was not possible to meaningfully evaluate POC's claims.

Finally, POC argues that SDG&E added 800 MW of energy from the Commission's approval of Pio Pico (2017) and the Carlsbad Energy Center (2018), which render OMEC unnecessary. This argument ignores that the MWs attributable to the Pio Pico and Carlsbad power plants were approved specifically to replace the loss of the 800 MW Encina once-through cooling power plant and San Onofre Nuclear Power Plant. Those approvals already assumed OMEC would remain in operation through the 40-year life of the plant.²⁵ Thus, we find no error.

3. Other Available Capacity

POC contends the Resolution erred in calculating available local capacity for the San Diego-Imperial Valley local areas because it inappropriately removed the capacity from two combined heat and power ("CHP") resources that the Commission approved in 2018 in Resolution E-4901. POC argues the two CHP facilities were listed as existing resources in the CAISO's 2018-2019 Draft Transmission Plan. (Rhig. App., at pp. 25-26.)

It is true that the CAISO listed both CHP facilities as existing resources for purposes of its 2018-2019 draft transmission plan. However, CAISO's updated retirement and mothball list identifies both facilities as retired, or to be retired.²⁶ Thus, it was not error to exclude the associated capacity from those CHP facilities from the calculation of available local capacity.

4. Greenhouse Gas Emissions Reduction and Renewables Portfolio Standard Requirements

POC states that Senate Bill 350 and Senate Bill 100 set ambitious greenhouse gas ("GHG") emission reductions targets by 2030 which call for increased

²⁵ Resolution E-4981, issued February 25, 2019, at p. 10.

²⁶ CAISO Announced Retirement and Mothball List, located at: <http://www.caiso.com/Documents/AnnouncedRetirement-MothballListPosted112018.html>.

reliance on renewable resources to displace gas-fired generation.²⁷ POC says it does not claim these statutes prohibit any gas-fired generation. But it contends that approving the Confirmation conflicts with the Commission’s own GHG reduction policies and decisions.

To support this contention, POC cites D.18-02-018, which established a 42 million metric ton (“MMT”) GHG emission target for 2030. POC states that the “optimal resource portfolio” adopted in D.18-02-020 for 2019-2030 does not include any new gas generation and does not call for the procurement of any new gas resources for 2019-2030. POC views the Confirmation as new gas generation procurement in contravention of D.18-02-018.²⁸ (Rhg. App., at pp. 26-28, citing *Order Instituting Rulemaking to Develop an Electricity Integrated Resource Planning Framework and to Coordinate and Refine Long-Term Procurement Planning Requirements* [D.18-02-018] (2018) at pp. 79-80, 84-90 (slip op.).)

The OMEC Confirmation is not new gas generation procurement as contemplated by D.18-02-018. That decision considered new gas procurement to mean newly-built facilities. Otay Mesa is an existing gas generation resource. In addition, D.18-02-018 only went so far as to exclude newly-built gas-fired facilities from the optimal resource planning mix.²⁹ We did not prohibit the acquisition of power from gas-fired generation sources.

²⁷ See Pub. Util. Code, § 454.52 (added by Stats. 2015, ch. 547, Sec. 27.) & § 399.11 (added by Stats. 2015, ch. 547, Sec. 17.)

²⁸ POC also suggests that the OMEC Confirmation is improper because it is a significant source of air pollutants located within 6-8 miles of a disadvantaged community and continued reliance on the plant contravenes Section 454.52. (Rhg. App., at pp. 26-27.) We reject this argument because POC itself admits nothing in the cited statutes prohibit the use of fossil fuel generation. (Rhg. App., at p. 26.) And as compared to many other gas-fired facilities, OMEC is a newer and cleaner state-of-the-art generating plant. (See, e.g., D.06-09-021, *supra*, at p. 2.) Thus, to the extent OMEC is needed for reliability purposes, POC fails to show how the Confirmation was unreasonable or unlawful.

²⁹ D.18-02-018, *supra*, at pp. 79-90.

We also note that D.18-02-018 assumed gas-fired generation will still be the largest contributor of MW to the system through 2030.³⁰ And in our resource optimization analysis, we included approximately 20,000 MW of existing gas-fired generation through 2030 to meet system capacity needs.³¹ Thus, even if the Confirmation is a new contract, as an existing resource OMEC was included in the Commission's assumptions regarding needed gas-fired generation for future planning purposes. Accordingly, POC fails to show that the Confirmation contravenes D.18-02-018 or any other Commission policies and decisions.

F. Need

POC contends it was error to find that the CAISO's 2019 and 2023 local capacity need studies establish OMEC will likely be needed to meet local reliability need in the San Diego – Imperial Valley local area over the next five years. Those studies identified a local reliability need of 4,026 MW in 2019, potentially increasing to 4,132 MW in 2023.³² POC argues those estimates should be rejected, because the CAISO has a pattern of overestimating resource adequacy need. (Rhg. App., at pp. 30-31.)

To support this position, POC points to other proceedings in which we have rejected CAISO need estimates. In particular, POC cites to D.18-02-018, *supra*, and D.14-03-004, to argue the Commission should reject the CAISO's estimates here.³³

We do not agree that our determinations in the cited decisions called for us to reject the CAISO's analysis here. Even POC acknowledges that in D.18-02-018 we found the CAISO's need estimate too conservative, not too high. And in D.14-03-004, the Commission did ultimately authorize new procurement. Neither of those outcomes establish that the CAISO's estimates here were flawed, and POC fails to make any

³⁰ D.18-02-018, *supra*, at p. 86, Table 1.

³¹ D.18-02-018, *supra*, at pp. 84-85, Figure 3.

³² Resolution E-4981, issued February 25, 2019, at pp. 10-11.

³³ *Order Instituting Rulemaking to Integrate and Refine Procurement Policies and Consider Long-Term Procurement Plans* [D.14-03-004] (2014).

showing that the facts, circumstance, conditions, and assumptions that applied in D.18-02-018 and D.14-03-004 were relevant or controlling here.³⁴

In evaluating need, the Resolution explained that we evaluated four primary sources of information and analysis. Three were CAISO local capacity need reports and studies. One was an advice letter pertaining to CHP withdrawal.³⁵

There was nothing inherently unreasonable or unlawful in relying on the CAISO's need analyses, at least to some degree. Sections 345 and 345.5 direct the CAISO to ensure efficient and reliable operation of the electric transmission grid. Among other things, the CAISO must maximize the availability of existing electric generation resources to meet the needs of California electricity consumers, and reduce, to the extent possible, overall economic cost to the state's consumers.³⁶ The CAISO is thus well suited to provide an informed assessment of electric reliability and need, and POC does not establish how these studies were flawed.³⁷

Nevertheless, POC asserts that we failed to consider all the evidence, and failed to conduct our own independent analysis of how long OMEC energy may be needed. For example, POC suggests SDG&E should meet its need by procuring backstop energy from the CAISO. (Rhg. App., at p. 29.)

³⁴ POC also ignores that D.14-03-004 and D.18-02-018 both involved system need analyses, not local needs studies such as those in question here. Thus, the CAISO analyses and those two decisions were not directly comparable.

³⁵ Resolution E-4981, issued February 25, 2019, at p. 12, citing CAISO Final 2019 Local Capacity Technical Report, dated May 15, 2018 (located at: <http://www.caiso.com/Documents/Final2019LocalCapacityTechnicalReport.pdf>); CAISO Final 2013 Long-Term Local Capacity Technical Report, dated May 15, 2018 (located at: <http://www.caiso.com/Documents/Final2013Long-TermLocalCapacityTechnicalReport.pdf>); CAISO Final Net Qualifying Capacity Report for Compliance Year 2019, dated January 16, 2019 (located at: <http://www.caiso.com/planning/Pages/ReliabilityRequirements/Default.aspx>); and CHP withdrawal – SDG&E Advice Letter 3264-E (located at: <http://regarchive.sdge.com/tm2/pdf/3246-E.pdf>).

³⁶ See, e.g., Pub. Util. Code, § 345.5, subds. (b)(2) & (4).

³⁷ POC broadly asserts that the CAISO undervalued demand side capacity and relied on extreme interpretations of the transmission planning standard. (Rhg. App., at p. 31.) But absent more explanation and supporting evidence, it is not possible to discern the merit of those allegations.

We did not fail to consider all the evidence or conduct an independent analysis of the evidence presented. We considered POC's recommendation for alternative backstop procurement, but explained that reliance on backstop procurement is not a cost-effective and prudent course to take given the reliability must-run ("RMR") and CPM prices that would likely result.³⁸

Similarly, we independently analyzed the CAISO studies. For example, the Resolution noted the CAISO's assessment of need and resources included two resources that have actually retired and are thus no longer available. In addition, potential methodology changes concerning effective load carrying capability, plus planning assumptions the Commission has made in connection with other procurement determinations (which assume the existence of OMEC), all suggest the CAISO's evaluation here may have underestimated the local reliability need.³⁹ POC may disagree with our conclusions. But that does not mean we did not consider all the evidence or conduct an independent analysis.

Finally, POC states that even if we were right that future downward adjustments to the effective load carrying capability ("ELCC") may result in less available capacity from other resources (weighing in favor of the Confirmation), the CAISO still underestimated the potential for behind the meter ("BTM") photovoltaic ("PV") to satisfy SDG&E's local reliability need during the Confirmation period. POC estimates there will be 700 more MW of BTM PV capacity by 2023, which the CAISO did not account for. (Rhg. App., at pp. 31-32.)

POC's argument appears to be based on the assumption that historical installation rates will continue throughout the Confirmation period. That is an assumption that is uncertain and cannot be proved.

In addition, POC fails to establish that BTM PV can be relied on to meet SDG&E's local resource adequacy needs. BTM PV does reduce energy demand. But it

³⁸ Resolution E-4981, issued February 25, 2019, at p. 11.

³⁹ Resolution E-4981, issued February 25, 2019, at p. 10.

is not a dispatchable resource that can be relied on and scheduled by the CAISO in the same way as gas generation resources. Accordingly, though the CAISO's analyses do factor in BTM PV, it counts less than dispatchable resources for purposes of fulfilling resource adequacy needs. For these reasons, it would not have been reasonable to rely on the potential for increased BTM PV to satisfy SDG&E's local reliability need to the exclusion of the Confirmation.

III. CONCLUSION

For the reasons stated above, the application for rehearing of Resolution E-4981 is denied because no legal error was established.

THEREFORE, IT IS ORDERED that:

1. The application for rehearing of Resolution E-4981 is denied.
2. This proceeding, Application (A.) 19-03-026 is closed.

This order is effective today.

Dated August 1, 2019, at San Francisco, California.

MICHAEL PICKER

President

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

GENEVIEVE SHIROMA

Commissioners